

<div>CITY OF- SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</div> <div>STAFF REPORT</div>	Hearing Date/Agenda Number P.C. 07/10/02 Item.	
	File Number CPA95-032-02	
	Application Type Conditional Use Permit Amendment	
	Council District 1	
	Planning Area West Valley	
Assessor's Parcel Number(s) 403-33-014		
PROJECT DESCRIPTION		
Completed by: Darren McBain		
Location: South side of Campbell Avenue approximately 100 feet southerly of Hamilton Avenue		
Gross Acreage: 32.4 Net Acreage: 32.4 Net Density: N/A		
Existing Zoning: CG Commercial Existing Use: Amusement Game Arcade		
Proposed Zoning: No change Proposed Use: No change		
GENERAL PLAN		
Completed by: DM		
Land Use/Transportation Diagram Designation Regional Commercial		
Project Conformance: [x] Yes [] No [] See Analysis and Recommendations		
SURROUNDING LAND USES AND ZONING		
Completed by: DM		
North: Commercial shopping center CG Commercial		
East: Apartments R-M Residence		
South: Single-family residential R-1-8 Residence		
West: Commercial shopping center CG Commercial		
ENVIRONMENTAL STATUS		
Completed by: DM		
[] Environmental Impact Report found complete [x] Exempt [] Negative Declaration circulated on [] Environmental Review Incomplete [] Negative Declaration adopted on		
FILE HISTORY		
Completed by: DM		
Annexation Title: El Quito Park No. 4 Date: February 7, 1957		
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
[x] Approval Date: Approved by: _____ [] Approval with Conditions _____ [X] Action [] Denial _____ [] Recommendation [] Uphold Director's Decision		
APPLICANT/ DEVELOPER	OWNER	
Jungle Partners III 950 El Paseo de Saratoga San Jose, CA 95129	Sunrise Penguin Saratoga Limited Partnership, c/o Douglas Bigley 1875 Century Park East Los Angeles, CA 90067	

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Darren McBain

Department of Public Works

No comments

Other Departments and Agencies

Fire Department. No comments received from Code Enforcement and the Police Department

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Jungle Partners III, is requesting a Conditional Use Permit Amendment (CPA) to legalize (for purposes of Zoning Ordinance conformance) the amusement game arcade component of the existing “Jungle Fun and Adventure” business at El Paseo de Saratoga shopping center. The Zoning Ordinance requires a Conditional Use Permit (CUP) for amusement game arcades in the commercial zoning districts. An amusement game arcade includes any establishment with ten or more video games, pinball machines, or similar devices.

A CUP (File No. CP95-032) was approved for the overall shopping center in 1995. Indoor entertainment was included in the original 1995 CUP. However, the original CUP did not include an amusement game arcade, and the Jungle opened for business in 1997. Legalization of the amusement game arcade is the only aspect of the business that is at issue under the current CPA. The other components of the business conform to the approved CUP for the site and are not within the scope of this permit.

The Jungle Fun and Adventure is a family-oriented entertainment center that includes play structures, rides, and facilities for children’s parties, as well as the amusement game arcade that is the subject of this permit. The facility is entirely indoors. Detailed information about the business, including photos and floor plans, can be found at <http://www.junglefunandadventure.com>

The project site is an approximately 20,000-square-foot existing commercial tenant space at a 32-acre regional commercial shopping center. The site is generally surrounded by other portions of El Paseo de Saratoga shopping center. A single-family detached residential neighborhood adjoins the center’s southerly property line, near The Jungle’s tenant space.

Project Description

The applicant is requesting approval of an existing amusement game arcade, which includes approximately 30 video games, pinball machines, and similar coin-operated devices. No new construction or expansion of the existing facilities is proposed.

GENERAL PLAN CONFORMANCE

The proposed amusement game arcade is consistent with the site's designation of Regional Commercial on the San José 2020 General Plan Land Use/Transportation Diagram.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from further environmental review under the provisions of the California Environmental Quality Act (CEQA). CEQA provides an exemption (Section 15301) for projects that consist of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures.

ANALYSIS

The primary issue analyzed is compatibility with nearby land uses. The Jungle's tenant space is located near the southeast corner of El Paseo shopping center. Although there is a neighborhood of single-family detached homes relatively nearby, the closest property line is approximately 150 feet from the building, and about 200 feet from the building's entrance. In addition, there is an approximately 50-foot-wide, bermed-up area of landscaping between the residences and the shopping center. No outdoor facilities or activities are proposed or allowed under this permit or any previous permits. The potential for noise or privacy impacts related to the parking lot appears to be minimal, and no different from what might be expected for any other commercial use in this location. Although most businesses in the City of San Jose may, by right, stay open until midnight, this commercial establishment presently closes at 9 PM on weeknights and 10 PM on Fridays and Saturdays. No beyond-midnight extended hours of operation are proposed or approved under this permit.

The Jungle is located in a relatively less busy area of El Paseo shopping center, away from the main paths of vehicular circulation on the site. Such a location is advantageous, in that pedestrian safety with regard to driveways and parking lots is of particular concern for businesses that are geared toward children. Adequate parking exists on the site to serve the proposed arcade use. The Zoning Ordinance's parking standard for amusement game arcades is one parking space per 200 square feet of floor space, which is the same as for ordinary commercial retail.

In keeping with standard practices, this proposal was referred to the Police Department and the Code Enforcement Division. No comments or concerns were offered by either agency. It should be noted that, unlike some other amusement game arcades, The Jungle seems to cater primarily to families and younger children.

The Zoning Ordinance specifies that amusement game arcades shall be "allowed only as an incidental use to other allowed recreation uses." The current proposal conforms to this requirement. Most of The Jungle's floor area is devoted to indoor play areas, play structures, rides, and the like. Approximately 25% of the overall floor area appears to be used for video games and other similar devices that fall under the definition of an amusement game arcade.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Public/Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CG Commercial Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from environmental review.
4. The proposal is for legalization of an existing amusement game arcade at an existing commercial establishment.
5. The applicant proposes no new construction.
6. Customers of the establishment have access to the approximately 2,000 parking spaces provided at the overall shopping center of which this building is a part.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San Jose 2020 General Plan Land Use/Transportation Diagram of the City of San Jose.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and

3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit. Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** The existing development shall conform to approved development plans for the property, on file with the Department of City Planning and Building and to the San Jose Building Code (San Jose Municipal Code, Title 24). No New construction is approved.
2. **Expiration of Permit.** This permit shall become null and void after three years of the date of issuance of this permit. Prior to the expiration of this permit, the expiration of this permit may be extended upon the approval of a Permit Adjustment for a period three (3) years.
3. **Hours of Operation.** The standard hours of operation (7 AM to midnight) in the City of San Jose apply to this project. No extended hours of operation are approved.

4. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
5. **Lighting.** This permit allows no new on-site lighting.
6. **Sign Approval.** No signs are approved at this time. Any new proposed signs shall be subject to approval by the Director of Planning.
7. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
8. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
9. **Generators.** This permit does not include approval of any emergency back-up generator on the subject site.
10. **Other Required Permits.** The applicant shall maintain in good standing all other permits required for this use to the satisfaction of the Director of Planning.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

C: Applicant, Dennis Faz, San Jose Police Department-Permits Unit
Attachments: Location Map, Fire Memo, Plan sets